

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CAMMY N.-S.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

Case No. C20-5739 RAJ

**ORDER AFFIRMING DENIAL
OF BENEFITS**

Plaintiff appeals denial of Disability Insurance Benefits, contending the ALJ erred by rejecting a medical opinion and failing to account for necessary breaks. Dkt. 7. The Court **AFFIRMS** the Commissioner's final decision and **DISMISSES** the case with prejudice.

BACKGROUND

Plaintiff is 51 years old, has a high school education, and has worked as a sales clerk and a management trainee. Dkt. 5, Admin. Transcript (Tr.) 22. The ALJ found Plaintiff not disabled from her July 2011 alleged onset date through her December 2011 date last insured. Tr. 15-24. In pertinent part, the ALJ found Plaintiff's severe impairments of chronic obstructive pulmonary disease (COPD)/asthma restricted her to

ORDER AFFIRMING DENIAL OF BENEFITS

1 sedentary work without pulmonary irritants. Tr. 17, 18.

2 DISCUSSION

3 This Court may set aside the Commissioner's denial of Social Security benefits
4 only if the ALJ's decision is based on legal error or not supported by substantial evidence
5 in the record as a whole. *Trevizo v. Berryhill*, 871 F.3d 664, 674 (9th Cir. 2017).

6 A. Vuthy Leng, M.D.

7 In March 2018, Dr. Leng opined that during the relevant period in 2011 Plaintiff
8 needed nebulizer treatments every four hours about half the time, and every two hours
9 about half the time. Tr. 1095-96. The ALJ found Dr. Leng's opinions "not persuasive"
10 as inconsistent with the medical evidence because there was only a single record, in
11 August 2011, regarding nebulizer treatment and no indication of needing nebulizer
12 treatment every two hours. Tr. 21-22.

13 The ALJ's finding was supported by substantial evidence. On August 23, 2011,
14 Dr. Leng prescribed "Nebulizer solution" three to four times daily. Tr. 733. The
15 prescription, for 60 vials with five refills, would last about two to three months at this
16 frequency. *Id.* Dr. Leng's subsequent records show no further prescriptions for nebulizer
17 solution. *See* Tr. 735 (oral inhalers only). Plaintiff identifies no other evidence of
18 nebulizer treatment during, or near, the relevant period. Conflict with the medical
19 evidence was a sufficient reason to discount Dr. Leng's opinions. *See Ford v. Saul*, 950
20 F.3d 1141, 1156 (9th Cir. 2020) (inconsistency with objective medical evidence is a
21 specific and legitimate reason for rejecting a doctor's opinion). Inclusion of any
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1 erroneous reasons was harmless. *See Molina v. Astrue*, 674 F.3d 1104, 1117 (9th Cir.
2 2012) (error harmless if “inconsequential to the ultimate disability determination”).

3 Plaintiff argues a treatment record may be missing, because Dr. Leng’s May 2012
4 treatment note references vital signs measured on December 6, 2011. *See* Tr. 734.
5 However, the ALJ’s inference that Plaintiff only interacted with a staff member on that
6 date is reasonable. *See* Tr. 719; *Batson v. Comm’r, Soc. Sec. Admin.*, 359 F.3d 1190,
7 1193 (9th Cir. 2004) (“[T]he Commissioner’s findings are upheld if supported by
8 inferences reasonably drawn from the record.”). In any case, the only relevance Plaintiff
9 claims of a December 2011 visit is to show “there was no long period for which Dr. Leng
10 did not see or trea[t] the Plaintiff.” Dkt. 12 at 3. This would not, however, undermine
11 the ALJ’s finding that Dr. Leng’s opinions conflicted with the medical evidence.
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13 The Court concludes the ALJ did not err by discounting Dr. Leng’s opinions.

14 **B. Additional Break During Workday**

15 Plaintiff contends even if she only needed nebulizer treatment three to four times
16 per day, that would require an additional, unscheduled break and thus prevent her from
17 maintaining employment. Dkt. 12 at 1-2. Plaintiff’s contention is unsupported by the
18 record. If a person is awake 16 hours per day and spreads four treatments out evenly,
19 about five hours would pass between each treatment. This would, at most, require one
20 treatment during a normal eight-hour workday. A workday typically includes two 15-
21 minute breaks and a longer lunch break, which would accommodate Plaintiff’s asserted
22 need for more than 15 minutes. *See* Dkt. 7 at 3; *but see* Dkt. 12 at 2 (“The Plaintiff only
23

1 relies on the ALJ's statement that the Plaintiff would need 3-4 treatments daily and that
 2 these treatments take 10-15 minutes.").

3 Plaintiff asserts, with no citation to the record, that she needs nebulizer treatments
 4 when symptoms increase and thus cannot coordinate them with work breaks. Dkt. 12 at
 5 2. Dr. Leng's treatment records contradict Plaintiff's assertion. He prescribed nebulizer
 6 solution three to four times daily—not as needed or when symptoms increase. Tr. 733.

7 Plaintiff argues the ALJ erred by finding she stopped her COPD medications.
 8 Dkt. 7 at 4. However, Dr. Leng's May 2012 treatment records clearly state Plaintiff "had
 9 ... stop[ped] taking her medication of copd [*sic*]."

10 The Court concludes Plaintiff has shown no error in the ALJ's evaluation of
 11 Plaintiff's need for nebulizer treatment.
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13 CONCLUSION

14 For the foregoing reasons, the Commissioner's final decision is **AFFIRMED** and
 15 this case is **DISMISSED** with prejudice.

16 DATED this 5th day of March, 2021.

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20 The Honorable Richard A. Jones
 21 United States District Judge
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